



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Tina Paulk, Secretary
Miami-Dade Department of Transportation and Public Works

Christina Horne, Train Operator
Miami-Dade Department of Transportation and Public Works

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-162, Section 2-11.1(c), Contracting with the County; (j), Conflicting Employment Prohibited

DATE: October 23, 2024

CC: All COE Legal Staff; Veronica James, Rail Transportation Supervisor,
Department of Transportation and Public Works (“DTPW”); Felipe Hermida,
Chief of Bus Operations, DTPW

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your proposed registration as a vendor with Miami-Dade County and any possible conflicts of interest between your outside employment and your County employment.

Facts

You, Ms. Paulk, are employed by the DTPW as a Secretary. Your job duties primarily entail answering the telephone in the Coral Way Operations office of DTPW, maintaining employee schedules and organizing documents and files. Your mother, Christina Horne, is also a County employee.

You, Ms. Horne, are employed by DTPW as a Train Operator. Your job duties primarily entail driving a train to pick up and drop off passengers.

The two of you own a company, Ladybug Ice Cream & Party Rentals, LLC. This company rents party supplies, including tables, chairs, decorations and bounce houses, to individuals and organizations that are hosting parties. We consulted with Ms. Paulk’s supervisor, Felipe Hermida, who confirmed that he has approved Ms. Paulk’s outside employment but not yet entered that

approval in Informs. Mr. Hermida stated he did not see any reason for the work Ms. Paulk does for her private business to create a conflict with her County employment but noted that he had made sure she understood that she could not perform any work for her private company on County time or use County resources in her outside employment. We also consulted with Veronica James, Ms. Horne's supervisor. She said Ms. Horne's request for outside employment approval will be processed shortly.

Neither of you have access to confidential information in your County positions that you could use in your private business; nor do you intend to offer your private business services to members of the public you come in contact with in the course of your County duties. You both perform work for your private business on weekends and during the evening, outside of your County work hours.

You are seeking to register your private company as a County vendor so that you can bid on County solicitations.

Issue

Whether you may contract through your private business with Miami-Dade County.

Analysis

A. Contracting with the County

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County, so long as the contract in question does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. However, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2).

For example, a DTPW employee was permitted to bid on a contract to provide janitorial services to the Miami-Dade Police Department because the proposed contract was not with the department that employed him, and he had no oversight or administrative role in awarding or administering the contract. *See* INQ 23-101. *See also* INQ 23-74, INQ 23-64 and INQ 22-118 (DTPW employees

were permitted to contract with the County departments that provided small business grants because they did not work for those departments).

Here, you and your private company are **not permitted to contract with DTPW** because that is the County department that employs both of you. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 11-29. However, you and/or your private company may contract with other County departments that do not employ you, provided that neither of you have County duties that have any relation to the enforcement, administration, oversight, amendment, extension, or termination of any contract you and/or your anticipated private company may secure with the County.¹ *See* INQ 22-118.

However, “prior to submittal of a bid, response, or application of any type to contract with the County,” you must seek a conflict of interest opinion from the Ethics Commission regarding that particular County contract. County Ethics Code § 2-11.1(c)(4). **Please note that you should ask for an opinion each time you bid on a County contract.**

B. Outside Employment

Additionally, Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County’s Administrative Order 7- 1. “Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one’s official or public duties is possible.” A.O 7-1.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the employee’s independence of judgment in the performance of his or her official duties, thereby creating a conflict between the employee’s public duties and private interests. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162.

For example, a traffic engineer for DTPW was permitted to engage in outside employment as an engineer for private clients because his outside employment did not overlap with his County duties. *See* INQ 23-25; *see also* INQ 21-103 (a DTPW employee was permitted to work for Sodexo, which contracts with the County through Jackson Health Systems, because Sodexo did not contract with DTPW and the employee’s work for Sodexo did not overlap with his County employment); RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting).

It appears unlikely your outside employment with your private company will give rise to a conflict of interest for either of you because there is no overlap with your County duties and your private

¹ However, you should be aware that Florida law provides that no public employee may “rent, lease, or sell any realty, goods, or services to the ... employee’s own agency ... or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.” Fla. Stat. § 112.313(3).

company. It is unlikely that work for your private company will impair your independence of judgment in the performance of your County duties at DTPW, based on the information that you have provided to us at this time, including that a) your work will only occur outside of working hours; b) you will not be required to encounter the same or similar people or entities as in your County position; c) you will not use the same or similar resources that you use in your County work beyond best practices guides that are not the property of Miami-Dade County; d) your County position does not provide you with access to non-public information that is or could be relevant to your anticipated outside employment. Additionally, you have acknowledged that **you cannot offer the services of your private company to members of the public you encounter in the course of your County employment.**

You must continue to abide by certain limitations outlined below to avoid a conflict:

- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240,
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of your outside employers or their clients. *See* County Ethics Code Section 2- 11.1(h).
- You may not exploit your County position to secure special privileges or exemptions for yourself or your outside employers or their clients. *See* Section 2-11.1(g), Miami-Dade County Ethics Code.
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County's Elections Department by July 1st of each year. *See* County Ethics Code Section 2-11.1(k)(2).²
- You will not lobby the County on behalf of your outside employers or anyone else. *See* County Ethics Code § 2-11.1(m)(1). This means that you may not contact anyone within the County in an attempt to influence a decision about any contract that your private company may seek with the County. *See* County Ethics Code § 2-11.1(m)(1).

County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment

² The form is available online at <https://www.miamidade.gov/elections/library/forms/ outside-employment-statement.pdf>.

would be contrary, detrimental, or adverse to the interests of the County or the employee's department. *See* AO 7-1; RQO 16-02; RQO 00-10. Accordingly, **this memorandum does not grant you permission to engage in outside employment**. You must obtain permission to engage in outside employment every year from your department director.

Opinion

Based on the facts presented here, your outside employment for your private company does not appear to conflict with your County employment because it will not impair your independence of judgment in the performance of your County duties.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While this is an informal opinion, covered parties who act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.